

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

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KEITH THOMAS COX,

Plaintiff,

- against -

**ANSWER TO
AMENDED COMPLAINT**

07 Civ. 7654 (KMW)

NATIONAL RAILROAD PASSENGER
CORPORATION (AMTRAK) ET. AL., AMTRAK
POLICE OFFICER RON HUNTE #00441, HUDSON
GROUP (HUDSON NEWS) ET. AL., RIFAT RIZVI,
STORE MANAGER, HUDSON NEILS, 234 WEST
33RD ST. (PENN. STATION) ASSISTANT DISTRICT
ATTORNEY SCOTTO, NEW YORK COUNTY, CITY
OF NEW YORK, ET AL., ASSISTANT DISTRICT
ATTORNEY GERARD MENUSKI, NEW YORK
COUNTY,

Defendants.

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Defendants NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) ET.
AL., and AMTRAK POLICE OFFICER RON HUNTE #00441 ("Hunte"), by their attorneys,
Landman Corsi Ballaine & Ford P.C., hereby answer the Amended Complaint herein as follows:

ANSWER TO THE STATEMENT OF CLAIM

FIRST: Defendants NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) ET. AL., and AMTRAK POLICE OFFICER RON HUNTE #00441 ("Hunte") deny the
truth of the allegations contained in section "II" of the Amended Complaint as they pertain to Amtrak
and Hunte and deny knowledge or information sufficient to form a belief as to the truth of the
allegations as to the other defendants.

ANSWER TO THE INJURIES

SECOND: Defendants NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) ET. AL., and AMTRAK POLICE OFFICER RON HUNTE #00441 ("Hunte") deny the truth of the allegations contained in section "III" of the Amended Complaint as they apply to Amtrak and Hunte and deny knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

ANSWER TO THE EXHAUSTION OF ADMINISTRATIVE REMEDIES

THIRD: Defendants NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) ET. AL., and AMTRAK POLICE OFFICER RON HUNTE #00441 ("Hunte") deny the truth of the allegations contained in section "IV" of the Amended Complaint as they apply to Amtrak and Hunte and deny knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

ANSWER TO RELIEF

FOURTH: Defendants NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) ET. AL., and AMTRAK POLICE OFFICER RON HUNTE #00441 ("Hunte") deny the truth of the allegations contained in section "V" of the Amended Complaint as they apply to Amtrak and Hunte and deny knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

SIXTH: Any injuries suffered by plaintiff was caused solely by plaintiff's own negligence and/or intentional conduct and not by any negligence of defendants.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

SEVENTH: Any injuries suffered by plaintiff were caused, in part, by plaintiff's own negligence and/or intentional conduct, and any recovery by plaintiff must be diminished in proportion to that part of his injuries attributable to his own negligence and/or intentional conduct.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

EIGHTH: Any injuries suffered by plaintiff were not caused by a negligent or wrongful act or omission of defendants or any individual acting under their direction or control.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

NINTH: Plaintiff's Summons and Amended Complaint must be dismissed, in whole or in part, for failure to state a cause of action upon which relief may be granted.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

TENTH: Plaintiff fails to include all necessary parties to this action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

ELEVENTH: Plaintiff's false arrest, false imprisonment, assault and battery claims must be dismissed because they are barred by the applicable Statute of Limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

TWELFTH: Defendants NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) ET. AL., and AMTRAK POLICE OFFICER RON HUNTE #00441 ("Hunte") are not proper parties to this action.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

THIRTEENTH: Plaintiff's claims against all defendants are frivolous.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

FOURTEENTH: Plaintiff's 42 U.S.C. §1983 claims fail to state a cause of action and are frivolous.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

FIFTEENTH: Punitive damages may not be assessed against any of the defendants.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

SIXTEENTH: Any alleged statements by defendants with respect to plaintiff were truthful or otherwise privileged.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

SEVENTEENTH: Defendants are entitled to qualified immunity.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

EIGHTEENTH: Defendants are entitled to absolute immunity.

AS AND FOR AN FOURTEENTH AFFIRMATIVE DEFENSE

NINETEENTH: The Amended Complaint is barred, either in whole or in part, because any acts and/or conduct of the defendants were privileged and justified.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

TWENTIETH: Plaintiff's action against defendants are barred since there was no practice or procedure by defendants that caused any of plaintiff's alleged injuries.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

TWENTY-FIRST: The defendants sued in their official capacity had no notice of and no opportunity to respond to any alleged constitutional violations.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

TWENTY-SECOND: The defendants sued in their official capacity had no personal involvement in any alleged constitutional violations.

AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE

TWENTY-THIRD: Due to controlling collective bargaining agreements, defendants lacked final decision making authority.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

TWENTY-FOURTH: Plaintiff's claims are barred on the ground that plaintiff's conduct violated applicable state criminal laws.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

TWENTY-FIFTH: Any injuries suffered plaintiff were due to plaintiff's assumption of the risk based upon his own culpable conduct.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

TWENTY-SIXTH: Plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the Amended Complaint.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

TWENTY-SEVENTH: Plaintiff's Summons and Amended Complaint must be dismissed because his claims are barred by the provisions of the Tenth and Eleventh Amendments of the United States Constitution.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

TWENTY-EIGHTH: The Amended Complaint fails to state a cognizable claim against defendants.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

TWENTY-NINTH: Any criminal proceeding against plaintiff commenced or participated in by defendants were based upon probable cause and was not due to malice.

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

THIRTIETH: Any claim for punitive and/or exemplary damages is barred by the United States Constitution, including, inter alia, the Due Process, Equal Protection and Excessive Fines Clauses of the Constitution.

AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

THIRTY-FIRST: Any injuries suffered by the plaintiff were caused, in part, by plaintiff's own culpable conduct, and this action by plaintiff is barred.

AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

THIRTY-SECOND: At all times, defendants acted in good faith and without malice.

AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

THIRTY-THIRD: At all times, any detention of plaintiff, if any, was in a reasonable manner and for a reasonable period of time.

AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

THIRTY-FOURTH: Defendants use of physical force, if any, was at all times necessary and reasonable.

AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE

THIRTY-FIFTH: At all times, defendants had probable cause to believe a crime had been committed in defendants' presence or that defendants were otherwise justified in searching and detaining plaintiff.

AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

THIRTY-SIXTH: At all times, an objective officer of reasonable competence would have had probable cause to believe a crime had been committed or that he was otherwise justified in searching and detaining plaintiff.

AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

THIRTY-SEVENTH: If defendants NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) ET. AL., and AMTRAK POLICE OFFICER RON HUNTE #00441 are held liable in this action, then any possible damages award should be apportioned so that defendants are not responsible for the wrongdoing of the non-parties that plaintiff has failed to include in this action.

AS AND FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE

THIRTY-EIGHTH: This action is barred by the Prison Litigation Reform Act.

AS AND FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE

THIRTY-NINTH: This Action is barred by the doctrine of Res Judicata.

AS AND FOR A THIRTY-FIFTH AFFIRMATIVE DEFENSE

FORTIETH: This action is barred by the Doctrine of Stare Decisis.

WHEREFORE, defendants NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) ET. AL., and AMTRAK POLICE OFFICER RON HUNTE #00441 demand judgment dismissing the Amended Complaint herein, together with their costs and disbursements, and such other and further relief as this Court deems appropriate.

Dated: New York, New York
February 20, 2008

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By: 

Ronald E. Joseph (RJ9302)

Attorneys for Defendants

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CORPORATION (AMTRAK) ET. AL., and
AMTRAK POLICE OFFICER RON HUNTE #00441

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